

Members

Rep. Ron Herrell, Chairperson
Rep. Dennis Avery
Rep. John Day
Rep. David Frizzell
Rep. Phyllis Pond
Rep. Dean Young
Sen. Richard Bray
Sen. Murray Clark
Sen. David Long
Sen. William Alexa
Sen. Glenn Howard
Sen. Samuel Smith



INTERIM STUDY COMMITTEE ON CIVIL AND FAMILY LAW ISSUES

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MEETING MINUTES¹

Meeting Date: August 29, 2001
Meeting Time: 1:00 P.M.
Meeting Place: Kokomo City Hall, 100 S. Union St.,
City-County Chambers
Meeting City: Kokomo, IN
Meeting Number: 1

Members Present: Rep. Ron Herrell, Chairperson; Rep. John Day; Rep. Phyllis Pond; Rep. Dean Young; Sen. David Long.

Members Absent: Rep. Dennis Avery; Rep. David Frizzell; Sen. Richard Bray; Sen. Murray Clark; Sen. William Alexa; Sen. Glenn Howard; Sen. Samuel Smith.

Rep. Herrell called the meeting of the Interim Study Committee on Civil and Family Law Issues to order at 1:30 p.m. Rep. Herrell introduced the committee members and noted that the topics before the Committee today were (1) Juvenile Waiver and Tiered Correction and (2) Zachary's Law.

I. Juvenile Waiver and Tiered Correction

Judge Lynn Murray, the Howard Circuit Court Judge who is responsible for all

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

juvenile cases in Howard County, noted that the Indiana Council of Family and Juvenile Judges was in the process of developing a detailed position with respect to juvenile law, but had not yet completed this project. Judge Murray emphasized that her testimony represented her own opinion of juvenile law (see Exhibit 1 for a copy of Judge Murray's remarks).

Judge Murray stated that she believed that the legislature should take a comprehensive look at the juvenile code.

Judge Murray noted that juvenile crime had broadly declined across the nation, and observed that this decline was even more pronounced in Howard County, where juvenile crime had decreased by 20% since 1996. Despite the overall decrease, however, there was an increase in juvenile crimes involving weapons and illegal drugs.

Judge Murray observed that juveniles who commit crimes are faced with two consequences: (1) juvenile court or (2) adult court.

According to Judge Murray, most delinquent juveniles go to juvenile court, where the juvenile judge has numerous dispositional options, including commitment to the Department of Correction, placement in a community corrections program, or probation. Probation may include a broad array of conditions, such as treatment, counseling, personal development services, and other programs tailored to the juvenile's needs. Howard County operates an intensive juvenile probation program, where probation officers carry small caseloads and contact juvenile probationers more than two times per day.

Some juveniles are placed in the adult court system, either because of mandatory waiver provisions for children 16 and older who commit serious crimes, or because of discretionary waiver provisions for younger juveniles. Judge Murray testified that she was opposed to mandatory waiver provisions because some 16 and 17 year old juveniles can still be rehabilitated. Judge Murray noted that juvenile offenders fell into two categories: (1) impulsive kids, or show-offs, who should not be placed in adult facilities; and (2) hardened criminals. Judge Murray believed that judges should distinguish between these two groups, a task that requires careful consideration.

Judge Murray also cited evidence showing that mandatory waivers to adult courts had no additional deterrent effect on juveniles. In addition, Judge Murray noted that juveniles sometimes prefer to be waived to adult facilities because: (1) juveniles can bond out of adult court; (2) juveniles often receive shorter sentences in adult court; and (3) juveniles do not receive as much supervision in the adult system. However, juveniles in the adult system are in greater danger from other inmates and have a higher recidivism rate than juveniles in the juvenile system.

Judge Murray stated that one difficulty facing judges is the fact that there is no alternative between the adult system and the juvenile system. She noted that some states, such as Minnesota, have an "extended juvenile jurisdiction" system, which blends elements of the adult system and the juvenile system. In Minnesota, the juvenile court has jurisdiction until the juvenile reaches age 21. Courts in Minnesota may impose both juvenile and adult sanctions -- sometimes the adult portion of a sentence will be suspended. Some offenders start in the juvenile system and then transfer to the adult system after a certain number of years.

Discussion

Rep. Herrell noted that focusing on the juvenile offender ignores the victim of the crime, and observed that victims have difficulty understanding why one juvenile might be waived to adult court, while another, who has committed the same crime, might remain in the juvenile system. Judge Murray responded that victims were an important component of the juvenile system, and that she always permitted victims to have input in the waiver decision.

Sen. Long asked if we knew why juvenile crime had dropped. Judge Murray stated that she believed the drop in Howard County was due to early intervention, in particular

close work between the probation department and schools.

Sen. Long noted that the current mandatory waiver law applied to some very serious crimes, including murder, armed robbery, rape, and kidnapping, and observed that it is difficult, as a legislator, to treat 16 year old juveniles who commit such serious crimes as kids. Judge Murray stated that she believed that all juveniles should be considered for waiver individually.

Rep. Day suggested that rehabilitative efforts should be focused more on first offenders than on repeat offenders. Judge Murray agreed.

Laurie Elliott, a staff attorney with the Indiana State Bar Association's Committee on the Civil Rights of Children, noted that children waived to adult court were released prior to sentencing more frequently than children in the juvenile system, and had a higher recidivism rate. Ms. Elliott pointed to a study in Florida showing that even among juveniles who committed additional crimes, youths placed in the adult system became recidivists six times faster than youths placed in the juvenile system. (See Exhibit 2).

Ms. Elliott noted that juveniles in the adult system were more likely to commit suicide, be sexually assaulted, or be beaten. According to Ms. Elliott, juveniles in Indiana's adult system had fewer educational opportunities than juveniles in the juvenile system or than adults in the adult system, because juveniles were separated from the general population. ISBA believes that juveniles should have one chance in the juvenile system and offered a proposed amendment that would do this (See Exhibit 3).

Peter Hahn, a Marion County Public Defender, also spoke on behalf of the ISBA. Mr. Hahn observed that 20% of children waived to adult court were waived because of a misdemeanor. Mr. Hahn also noted that there was an increasing tendency for children to be waived to adult court, and that children increasingly desire to be waived to adult court. Mr. Hahn stated that a juvenile who committed a misdemeanor would often receive no supervision. Also, sometimes children waived to adult court would not be convicted, but this waiver meant that these children would henceforth be automatically waived to adult court under Indiana's "once waived, always waived" rule. Mr. Hahn offered proposed legislation that would address these concerns. (See Exhibit 4).

Discussion

Sen. Long inquired whether juveniles waived to adult court had long criminal histories. Mr. Hahn replied that some juvenile misdemeanants did have long records. Others were considered for waiver simply based on their age. Sometimes courts wanted older children to go to DOC for supervision.

Sen. Long asked whether a three-tiered system would necessarily require new facilities, noting that the cost of building a new facility was significant. Sen Long observed that it would be useful to know about effective programs that do not require new facilities. Mr. Hahn stated that the primary need in a tiered system was for increased supervision and probation.

Rep. Day observed that the additional costs of the Minnesota system tended to go for additional personnel, not new facilities. Rep. Day also noted that some states consider 17 year olds to be adults. Mr. Hahn responded that he believed that 17 year olds were children.

Randy Koester, from the Department of Correction, provided the Committee with information detailing the youthful offender population within DOC. (See Exhibit 5). Mr. Koester noted that in 1999, DOC hired a juvenile consultant from Missouri to make recommendations for handling youthful offenders. In March 2000, DOC conducted a symposium on juvenile justice and invited stakeholders in the juvenile justice system to participate. The synopsis of this symposium was provided to the Committee. (See Exhibit 6).

Mr. Koester testified that DOC has a program aimed at youth incarcerated as adults (YIA). Mr. Koester noted that participants in the YIA program included all offenders under the age of 18, and many offenders aged 18-22. As a result of the YIA program, juveniles in the adult system were no longer deprived of educational opportunities. Juvenile offenders were placed together in the same housing unit in DOC facilities, based on the juveniles' security level. The YIA program requires an individualized case management plan for each offender, requires that the offenders attend school, and requires that the offenders attend a "life skills" program. Mr. Koester noted that the head of the DOC was formerly the head of the juvenile division.

Discussion

Rep. Pond asked whether the fact that DOC appeared to be receiving fewer offenders below the age of 18 represented a trend. Mr. Koester replied that he believed that it was too early to know if it was a trend.

Sen. Long asked what fiscal impact a blended sentencing scheme might have. Mr. Koester replied that this would probably result in more offenders.

Sen. Long asked whether reducing waivers to adult court would lead to fewer offenders. Mr. Koester replied that reducing waivers might lead to fewer offenders, although it was "sort of speculative."

II. Zachary's Law

Catherine O'Connor, executive director of the Criminal Justice Institute (which maintains the Sex Offender Registry) testified that the Registry contains 12,256 names. 5949 names have been added to the registry in the past 7 years. Ms. O'Connor distributed a handout describing the statutory scheme of Zachary's law. (See Exhibit 7). Ms. O'Connor explained that the Registry came out in book form three times a year; the web version of the Registry was updated daily. According to Ms. O'Connor, the web site is one of the ten most visited pages on the state government web site. Responding to a question from **Rep. Pond**, Ms. O'Connor explained that one could look up sex offenders by city.

The Registry is designed to be a reference tool for interviewers looking to hire people who will work with children. The Criminal Justice Institute received an initial \$49,000 grant to publish the Registry. Funds for the Registry now come from Victim and Witness Assistance Funds. Since 1995, the Registry has cost approximately \$100,000 per year. In addition, the CJI has received approximately \$1,000,000 per year to rebuild the state's criminal records system. The new system includes an automated fingerprint system. Sex offenders are also flagged in this new criminal records system, which can be linked nationally.

Discussion

Rep. Herrell asked how local information was placed on the Registry. Ms. O'Connor stated that local information was entered into a spreadsheet from forms sent in by local officials.

Rep. Herrell asked how the new criminal records system related to the Registry. Ms. O'Connor stated that the new records system should make the Registry more efficient.

Rep. Herrell asked what adding photographs would do to the Registry. Ms. O'Connor stated that it would likely make the hard copy version of the Registry much more expensive. Ms. O'Connor also observed that states such as Indiana, that depend on local information for their registries, often do not include photographs in the statewide registry, although this information is usually available at the local level. Ms. O'Connor also noted that this issue was on the agenda of the Criminal Law Study Commission. Ms. O'Connor

believed that Zachary's law would need to be entirely rewritten if photos of sex offenders were to be included in the Registry, and she observed that it was hard to check the Registry -- including the web site -- for accuracy.

Sen. Long asked what the penalty for failing to register was. Ms. O'Connor replied that it was a Class D felony for the first offense, and a Class C felony for a subsequent offense.

Rep. Day asked whether the Registry had fulfilled the purpose of preventing crime. Ms. O'Connor stated that while some individuals believed that the Registry was ineffective, she believed that it was of some help based on the popularity of the Registry in both book and electronic form.

Larry Hembree, of Liberty Behavioral Health Corp., a company with a contract with DOC to monitor sex offenders, observed that it was difficult for CJI to ensure the Registry's accuracy because the CJI cannot always know where an offender will choose to reside. Overlapping jurisdictional boundaries complicate the registration process at the local level because an offender may register with any one of several law enforcement agencies that might have jurisdiction where the offender resides. Mr. Hembree also observed that several law enforcement agencies had manpower problems that made it difficult to maintain their sex offender records. In addition, the probation departments of some counties apparently do not believe that it is necessary to maintain street addresses for their probationers.

Mr. Hembree stated that of 420 probationers he supervised, 75 were not on the registry, even if they complied with the law and registered. Mr. Hembree testified that he believed that the offender registration system needed a better interface for law enforcement, which would require better technology. Mr. Hembree stated that he believed that the Registry was often not accurate, in part because it relied on offenders to self-report. Mr. Hembree also stated that he would be concerned about the accuracy of any photographs placed in the registry, although he believed that this would be much less of a problem if the photos were taken at the time the offender registered. Mr. Hembree distributed a handout describing certain statutory provisions of Zachary's law. (See Exhibit 8).

Discussion

Rep. Herrell asked about the recidivism rate for sex offenders. Mr. Hembree stated that approximately 40 of the sex offenders he supervised had committed a new offense.

Sen. Long asked how the system could be improved, especially with respect to self-reporting. Mr. Hembree stated that requiring the local probation department to enforce registration would probably be better.

Sen. Long asked whether there would come a point where the probation department would no longer supervise offenders, and thus no longer be an effective means of enforcing the registration requirement. Mr. Hembree replied that this would be true for some offenders, although it would also be hard for law enforcement to keep track of these individuals.

Kris Campbell distributed a comprehensive packet containing a description of how she believed Zachary's law could be made more useful. (See Exhibit 9). Ms. Campbell testified that she believed that the Registry should contain five items per offender: (1) the offender's picture; (2) the offender's address; (3) the offender's county of residence; (4) the offender's city of residence; and (5) a map of the offender's residence. Ms. Campbell stated that she believed that Indiana was behind other states, noting that Indiana only included two of the five suggested items (the offender's city and county of residence). In addition, Ms. Campbell testified that the Registry should contain more detailed information about the offender's crime, as this would be helpful for ordinary citizens who might live

near a sex offender. Ms. Campbell also stated that the state could apply for grant money to pay for improvements to the registry.

III. Next meeting

The committee agreed to hold the next meeting at 1:00 p.m. on September 18, 2001, at the same location.